IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 97 OF 2003

Netaji Pratisthan)
(Reg. No. Mah. 1103/2001 Pune))
Netaji Nagar, Wanwadi, Pune-410 040)..Petitioner

Versus

1. Government of Maharashtra,)
Ministry of Urban development,)
Mantralaya, Mumbai.)

2. The Collector, Pune.)

3. The Commissioner, Pune Municipal)
Corporation, Pune.)

4. Hari Shankar Borade)

5. Pramod Waman Borade)

6. Mohan Mahadev Borade)
All R/at 86 A, Wanwadi, Pune-411 040)..Respondents

Mr. P.M. Gore for the petitioner.
Mr. V.P. Malvankar, Assistant Government Pleader, for respondent Nos. 1 and 2.
Mr. R.G. Ketkar for respondent No.3.
Mr. K.K. Waghmare for respondent Nos. 4 to 6.

CORAM: DALVEER BHANDARI, C.J., &
DR. D.Y. CHANDRACHUD, J.

DATE: AUGUST 30, 2004.

ORAL JUDGMENT (Per Dalveer Bhandari, C.J.)

1. The petitioner, Netaji Pratisthan, is a social welfare organisation registered under the provisions of the Bombay Public Trusts Act. The petitioner, amongst its activities, takes up issues such as social health, sanitary problems, etc. with Municipal Authorities, State Governments, etc.

2. The petitioner has instituted the present petition as a public interest litigation for safeguarding the environmental problems and health of residents of Wanwadi and Kondhwa areas for preventing the use of the residential area by respondent Nos. 4 to 6 for using their premises for storing, curing or treating/tanning, etc. of animal hides and wastes.

3. According to the petitioner, tanneries are located at S. No. 86-A at Wanwadi. The residents in the adjoining areas of these tanneries complained of bad odour to the municipal authorities by sending representations. The Pune Municipal Corporation, respondent No.3, on receipt of complaints from the residents of the said areas deputed the Health Inspector for carrying out

survey of the areas and after being satisfied by the inspection report came to the conclusion that continuance of these tanneries has resulted into health hazard for the residents.

4. The Chief of Health by his order dated 2nd November, 2002 issued to respondent Nos. 4 to 6 cancelled their licenses.

5. The Respondent Nos. 4 to 6 aggrieved by the order passed by the Municipal Corporation approached the State Government and the State Government by order dated 12th February, 2003, cancelled the order passed by the Pune Municipal Corporation dated 22nd February, 2003. Before cancelling the order, no notice has been given even to the Municipal Corporation. It may be pertinent to mention that no reasons whatsoever have been given by the State Government cancelling the order passed by the Pune Municipal Corporation. In our considered view, the Pune Municipal Corporation passed the order while keeping in view the public interest. The State Government was hardly justified in interfering with the said order without even giving notice to the Pune Municipal Corporation.

6. The State Government has been invested with powers under Section 451 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the Act"). This power can be exercised only when the order of the Municipal Corporation is likely to lead to a breach of the peace or to cause injury or annoyance to the public or any class or body of persons, or is likely to lead to abuse or misuse or to cause waste of municipal funds against the interest of the public. These are the only circumstances in which the State Government would be justified in invoking its powers under Section 451 of the Act. Section 451 of the Bombay Provincial Municipal Corporations Act, 1949 reads as under:

> " 451. **Power of State Government to suspend or rescind any resolution or order, etc. of Corporation or other authority in certain cases:** (1) If the State Government is of opinion that the execution of any resolution or order of the Corporation or any other authority or that the doing of any act which is about to be done or is being done by or on behalf of the Corporation or such authority is in contravention of or in excess of the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or any class or body of persons, or is likely to lead to abuse or misuse of or to cause waste of municipal funds against the interests of the public, the State

> Government may, by an order in writing suspend the execution of such resolution or order or prohibit the doing of any such act, for such period or
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> periods as it may specify therein. A copy of such order shall be sent forthwith by the State Government to the Corporation and the Commissioner or the Transport Manager.
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> 2. On receipt of a copy of the order as aforesaid, the Corporation or Commissioner or Transport Manager may, if it or he thinks fit, make a representation to the State Government against the said order.
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> 3. The State Government may, after considering any representation received from the Corporation or Commissioner or Transport Manager and where no such representation is received within a period of thirty days, either cancel, modify or confirm the order made by it under sub-section (1) or take such other action in respect of the matter as may in its opinion be just or expedient, having regard to all the circumstances of the case. Where any order made under sub-section (1) is confirmed the State Government may direct that the resolution or order of the Corporation or its authority in respect of which suspension order was made under sub-section (1) shall be deemed to be rescinded.
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> (4) Where any order is made by the State Government under sub-section (50, it shall be the duty of every Councillor and the Corporation and any other authority or officer concerned to comply with such order."

The Corporation would be justified in exercising its powers under Section 451 of the Act in only exceptional circumstances as

enumerated in the Section. In the instant case, the order which in fact was passed by Pune Municipal Corporation at the behest of residents of the locality in public interest. The State Government was not at all justified in passing the impugned order cancelling the order passed by Municipal Corporation in the facts and circumstances of this case. The State Government has not given any reason whatsoever in support of its order. No notice was given even to Pune Municipal Corporation before passing the said order. Even while exercising quasi-judicial functions, the concerned authorities have to comply with the basic principles of natural justice. In our considered opinion, the order passed by the State Government is totally unsustainable in the eye of law. Consequently, the order passed by the State Government on 12th February, 2003 is accordingly set aside. Entire proceedings emanating from the said order before the State Government shall stand disposed of.

7. We would like to observe that this order would not come in the way of respondent Nos. 4 to 6 to take all steps available to them in accordance with law. No further directions are necessary in this petition and this petition is accordingly disposed of.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.